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24 Proposed Attorneys for The Roman Catholic  
25 Archbishop of San Francisco

26 UNITED STATES BANKRUPTCY COURT

27 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

28 In re  
1 THE ROMAN CATHOLIC ARCHBISHOP  
2 OF SAN FRANCISCO,  
3  
4 Debtor and  
5 Debtor in Possession.

6 Case No. 23-30564

7 Chapter 11

8 **DEBTOR'S EMERGENCY MOTION FOR  
9 INTERIM AND FINAL ORDERS  
10 (1) PROHIBITING UTILITY COMPANIES  
11 FROM ALTERING, REFUSING OR  
12 DISCONTINUING SERVICE,  
13 (2) DETERMINING ADEQUATE  
14 ASSURANCE OF PAYMENT FOR POST-  
15 PETITION UTILITY SERVICES UNDER 11  
16 U.S.C. § 366, (3) ESTABLISHING  
17 PROCEDURES FOR DETERMINING  
18 ADEQUATE ASSURANCE OF PAYMENT,  
19 AND (4) SCHEDULING A FINAL HEARING**

20 Date: August 24, 2023  
21 Time: 1:30 p.m.  
22 Location: Via ZoomGov

23 Judge: Hon. Dennis Montali

24  
25 *Hearing Requested on Shortened Time*

1 The Roman Catholic Archbishop of San Francisco (“RCASF” or “Debtor”), the debtor and  
2 debtor in possession in the above-captioned chapter 11 case (the “Bankruptcy Case”), hereby moves  
3 the Court (the “Motion”) for entry of an order, in the form attached hereto as Exhibit 1, after an  
4 interim hearing, (1) prohibiting utility companies from altering, refusing or discontinuing service;  
5 (2) determining that the Debtor’s furnishing of deposits to Utility Companies (defined below)  
6 constitutes adequate assurance of payment; (3) establishing procedures for providing or determining  
7 adequate assurance of payment in response to requests from the affected utilities; and (4) scheduling  
8 a final hearing thereon. In support of this Motion, the Debtor relies upon the *Declaration of Joseph*  
9 *J. Passarello in Support of Chapter 11 Petition and First Day Motions* (“Passarello Background  
10 Decl.”), the *Declaration of Paul E. Gaspari in Support of Chapter 11 Petition and First Day Motions*  
11 (“Gaspari Decl.”), and the *Declaration of Joseph J. Passarello* filed in support of this Motion  
12 (“Passarello Decl.”), as well as all exhibits filed in support of these declarations. In further support  
13 of this Motion, the Debtor respectfully represent as follows:

I.

## **JURISDICTION**

16 1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.  
17 Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to  
18 28 U.S.C. § 157(b)(2)(A), (O). The statutory bases for the relief requested herein are 11 U.S.C.  
19 §§ 105(a) and 366.

20        2.        The RCASF does not, by filing its petition for relief and other documents in the  
21 Bankruptcy Case, waive any of its rights under any applicable law, including, without limitation,  
22 the Code of Canon Law, the First Amendment of the United States Constitution, the Constitution  
23 for the State of California, California's law on corporations sole (California Corporations Code  
24 §§ 10000-10015), the Religious Freedom Restoration Act, the church autonomy doctrine, charitable  
25 trust law, California trust law, and the rights to object to disclosure of information and to contend  
26 that certain assets discussed in the Motion are not property of the estate.

II.

**RELIEF REQUESTED**

3       3.      The Debtor's ongoing operations require it to maintain uninterrupted utility services  
4 including electricity, natural gas, telephone, water, waste removal, internet and other services.  
5 Termination of a utility service would cause immediate and irreparable harm to the Debtor's  
6 operations and critical reorganization efforts.

7       4.       The Debtor has multiple facilities and receives utility services from numerous utility  
8 companies. These facilities include: the Chancery Office located at One Peter York Way, San  
9 Francisco; 1600 Van Ness Ave, San Francisco (property leased to tenants under leases that provide  
10 for tenants to reimburse for utilities); 320 Middlefield Rd., Menlo Park (building leased to  
11 Chesterton Academy of St. James, which reimburses the Debtor for utilities; campus real property  
12 belongs to St. Patrick's Seminary and University upon which the Debtor built the building); and 455  
13 W. 20<sup>th</sup> Ave., San Mateo (Serra Clergy House for retired clergy; the Debtor assists with support for  
14 retired priests by paying utilities); and 5618 California St., San Francisco (California Street  
15 Apartment). A list of the utility companies ("Utility Companies") and the Debtor's corresponding  
16 utility company accounts is listed on Exhibit 2 attached to the Motion.<sup>1</sup> None of the Utility  
17 Companies hold prepetition deposits. Prior to the Petition Date, the Debtor timely remitted  
18 payments on monthly utility service obligations. The sum of all monthly payments to these utilities  
19 for these accounts averages about \$30,000 per month in the aggregate. Passarello Decl. at ¶ 5.

20        5. Pursuant to section 366(c) of the Bankruptcy Code,<sup>2</sup> the Debtor proposes to provide  
21 its Utility Companies adequate assurance of payment as follows:

22 (a) Upon request, the Debtor will provide each Utility Company a cash deposit  
23 (the “Deposit”) in an amount equal to 50% of the Debtor’s estimated monthly cost of its utility  
24 consumption from each Utility Company, less amounts, if any, of existing prepetition utility

26 |<sup>1</sup> The Debtor reserves the right to supplement the list of utility companies, and also reserves the right  
27 | to argue that any of the listed utility companies do not fall under the purview of section 366 as a  
| “utility.”

<sup>28</sup> <sup>2</sup> Unless otherwise indicated, all section references in this Motion shall be to 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”).

1 deposits. The estimated monthly cost will be calculated using the average of monthly invoices for  
2 the past year. If a Utility Company provides the Debtor with services under multiple accounts, then  
3 the Debtor may provide that Utility Company with one deposit that equals 50% of the aggregate  
4 estimated monthly usage under all of the Debtor's accounts with that Utility Company. The Deposit  
5 shall be provided within ten court days of the receipt by the Debtor or its bankruptcy counsel of a  
6 written request from a Utility Company for adequate assurance under the Bankruptcy Code.

7 (b) In the event that a Utility Company believes that the Debtor's utility Deposit  
8 does not constitute adequate assurance of payment that is "satisfactory" to that Utility Company in  
9 accordance with section 366(c)(2), within 45 calendar days of entry of the Court's order approving  
10 the Motion, the Utility Company must serve upon the Debtor and its counsel, and file with the Court  
11 a specific request for adequate assurance ("Assurance Request"). The Assurance Request must  
12 include: (i) the location and account number(s) for which utility services are provided; (ii) the  
13 outstanding balance on the account and a summary of the Debtor's payment history; (iii) the reasons  
14 why the Deposit does not constitute satisfactory adequate assurance of payment; and (iv) a proposal  
15 of what the Utility Company believes would constitute satisfactory adequate assurance of payment.  
16 Without further order of the Court, the Debtor may enter into agreements granting additional  
17 adequate assurance to a Utility Company that timely files and serves an Assurance Request. Failure  
18 by a Utility Company to timely file and serve an Assurance Request shall result in such Utility  
19 Company being deemed to have received satisfactory adequate assurance of payment, and shall be  
20 prohibited from altering, refusing, or discontinuing service to the Debtor.

21 (c) In the event that one or more Utility Companies submit an Assurance Request  
22 that is determined by the Debtor to be unreasonable, within 21 days of receipt of such Assurance  
23 Request the Debtor will schedule a hearing on shortened notice and serve notice of such hearing on  
24 the affected Utility Companies. The Utility Companies shall be prohibited from altering, refusing  
25 or discontinuing service to the Debtor until the Court issues an order authorizing such action, after  
26 a hearing on the Assurance Request.

27  
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1       6.       The Debtor submits that the proposed adequate assurance to Utility Companies  
2 sufficiently addresses the requirements of section 366. A copy of the proposed Interim Order  
3 granting this Motion is attached hereto as Exhibit 2.

### III.

## **BACKGROUND**

6       7.       On August 21, 2023 (“Petition Date”), the RCASF filed a voluntary Chapter 11  
7 petition. The Debtor remains in possession of its estate, no trustee having been appointed. The  
8 Debtor is operating and managing its business as a debtor in possession pursuant to the provisions  
9 of sections 1107 and 1108 of the Bankruptcy Code.

10       8.     The RCASF filed this Bankruptcy Case to reorganize its financial affairs pursuant to  
11 a plan of reorganization that will, among other things, fairly, justly, and equitably compensate  
12 survivors of sexual abuse by clergy or others associated with the RCASF and bring healing to  
13 survivors, parishioners and others affected by past acts of sexual abuse. The RCASF requires the  
14 Bankruptcy Court's protection and the protection of the bankruptcy laws to make fair and equitable  
15 payment on all of the claims against it, including the claims by survivors of abuse, trade creditors,  
16 and others, while continuing its ministries and support it offers to Catholic parishes and  
17 communities.

18        9.        The Archdiocese of San Francisco (the “Archdiocese”)<sup>3</sup> was canonically established  
19 on July 29, 1853, by Pope Pius IX. The Archdiocese now includes 88 parishes some of which have  
20 missions associated with them (“Parishes”). The Archdiocese consists of approximately 442,000  
21 Catholics in the counties of San Francisco, San Mateo, and Marin covering approximately 2,325  
22 square miles. Archdiocesan priests and permanent deacons, along with priests, brothers and nuns  
23 from multiple religious orders serve parishes, schools, Catholic hospitals and do other outreach  
24 within the San Francisco Archdiocese.

<sup>27</sup> <sup>28</sup> <sup>3</sup> The term “Archdiocese” is used herein exclusively to refer to geographic territory under the jurisdiction of the RCASF, and the terms RCASF, Debtor, or Debtor in Possession are used herein exclusively to refer to the secular legal embodiment of the Archdiocese.

1       10. The primary role of the RCASF is to provide resources, spiritual leadership,  
2 direction, support, planning, programming, leadership development and other services to individuals  
3 of the Roman Catholic faith, the Parishes, four Archdiocesan Catholic high schools (Archbishop  
4 Riordan High School, Sacred Heart Cathedral Preparatory, Marin Catholic High School and  
5 Junipero Serra High School (collectively, the “High Schools”)), numerous elementary schools and  
6 private independent schools (collectively, the “Schools”), cemeteries (“Cemeteries”) and various  
7 other Catholic-based social and community service organizations that operate in the Archdiocese.  
8 The RCASF has approximately 140 employees (full time equivalent), including approximately 54  
9 salaried employees, 37 hourly employees, and 32 Clergy and Religious Order payees and 17 stipend  
10 seminarians.

11        11. As a religious organization, the RCASF has no significant ongoing for-profit  
12 business activities or business income. The RCASF's receipts principally come from the  
13 Archdiocesan Annual Appeal (held in trust for named ministries only), fees for services provided to  
14 the certain non-debtor Catholic entities, revenue from insurance billings, donations, grants, rent  
15 from owned properties, and RCASF ministry revenue. The RCASF's fiscal 2023 operating budget  
16 is approximately \$55 million in revenues. The RCASF operates on a fiscal year ending June 30.

17        12. Additional information regarding the circumstances leading to the commencement  
18 of the Bankruptcy Case and information regarding the Debtor's operations and structure is set forth  
19 in the Passarello Background Decl.

IV.

## LEGAL AUTHORITIES

22       13. In general, courts view utility services as a necessary minimum for rehabilitation in  
23 a chapter 11 case. *See Whittaker v. Phila. Elec. Co. (In re Whittaker)*, 882 F.2d 791, 794 (3d Cir.  
24 1989). Because utility companies generally exercise practical monopoly power in providing  
25 essential services, utility companies may force a bankruptcy debtor to capitulate to payment  
26 demands by threatening to terminate service. *See In re Woodland Corp.*, 48 B.R. 623, 624 (Bankr.  
27 D.N.M. 1985); *In re Tel-Net Hawaii, Inc.*, 131 B.R. 723, 727 (Bankr. D. Haw. 1991); *see also*

1 Bertrand Pan and Jennifer Taylor, *Sustaining Power: Applying 11 U.S.C. § 366 in Chapter 11 Post-*  
2 *BAPCPA*, 22 BANKR. DEV. J. 371, 373 (2006).

3       14.     In protecting a debtor from a termination in utility services, section 366(a) works as  
4 an injunction and provides, in part, that a “utility may not alter, refuse, or discontinue service to, or  
5 discriminate against, the trustee or the debtor solely on the basis of the commencement of a case  
6 under this title or that a debt owed by the debtor to such utility for service rendered before the order  
7 for relief was not paid when due.” 11 U.S.C. § 366(a).

8       15.     At the same time, in ensuring adequate assurance of payment to a utility, section  
9 366(b) requires that the utility may alter, refuse, or discontinue service if the debtor, within 20 days  
10 after the petition date, does not furnish “adequate assurance of payment, in the form of a deposit or  
11 other security, for service after such date.” 11 U.S.C. § 366(b). “Adequate assurance of payment”  
12 does not require an absolute guaranty of payment. *In re Utica Floor Maintenance, Inc.*, 25 B.R.  
13 1010, 1014 (N.D.N.Y. 1982).

14       16.     In addition, by the enactment of the Bankruptcy Abuse and Consumer Protection Act  
15 of 2005 (“BAPCPA”), section 366 was expanded to include subsection (c), which provides that the  
16 chapter 11 debtor must provide assurance of payment “satisfactory” to the utility within thirty (30)  
17 days of the petition date, and limits the types of security that are acceptable as assurance of payment.  
18 *See* 11 U.S.C. § 366(c)(1)(A).<sup>4</sup> After notice and a hearing, a court has the authority to modify the  
19 amount of an assurance of payment. 11 U.S.C. § 366(c)(2). However, subsection (c), while  
20 specifying proper forms of “assurance of payment,” leaves to the court’s discretion the question of  
21 the proper monetary amounts for “assurance of payment.”

22       17.     The assurances to utility companies set forth under subsections (b) and (c) of section  
23 366 are not mutually exclusive. *In re Lucre, Inc.*, 333 B.R. 151, 155 (Bankr. E.D. Mich. 2005).  
24 However, section 366(c) applies only in chapter 11 cases. *In re Astle*, 338 B.R. 855, 859 (Bankr.  
25 D. Idaho 2006); *see also* Pan, *supra*, at 387-88 (discussing that a debtor may be able to comply with

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26  
27       <sup>4</sup> The term “assurance of payment” is limited to: (i) a cash deposit; (ii) a letter of credit; (iii) a  
28 certificate of deposit; (iv) a surety bond; (v) a prepayment of utility consumption; or (vi) another  
form of security that is mutually agreed on between the utility and the debtor or the trustee.  
11 U.S.C. § 366(c)(1)(A).

1 both subsections (b) and (c), but may be impractical due to differing 20-30 day deadlines, and  
2 therefore, subsection (c) would be the better approach in chapter 11 cases).

3       18. The pre-BAPCPA legislative history of section 366 indicates that Congress sought  
4 to achieve the dual purpose of giving Debtor protection from a termination of utility service, while  
5 protecting utility companies through adequate assurance of payment. *See In re Gehrke*, 57 B.R. 97,  
6 98 (Bankr. D. Or. 1985). BAPCPA did not amend the balance of section 366, and therefore, pre-  
7 BAPCPA case law interpreting section 366 remains applicable. *Astle*, 338 B.R. at 861.

8       19. The bankruptcy court exercises great discretion and flexibility in applying section  
9 366. *Marion Steel Co. v. Ohio Edison Co. (In re Marion Steel Co.)*, 35 B.R. 188, 195 (Bankr. N.D.  
10 Ohio 1983); *see also In re Astle*, 338 B.R. at 861. The bankruptcy court's authority is further  
11 supported by section 105, which allows for the court to "issue any order, process, or judgment that  
12 is necessary or appropriate to carry out the provisions" of Title 11. *See e.g., In re George C. Frye*  
13 *Co.*, 7 B.R. 856, 857 n.2 (Bankr. D. Me. 1980). A determination under section 366 is necessarily  
14 fact-intensive and looks to the totality of the circumstances. *See, Marion Steel*, 35 B.R. at 198  
15 (citations omitted); *see also Astle*, 338 B.R. at 861.

16       20. Here, the Debtor proposes to provide each Utility Company that so requests a cash  
17 deposit equal to 50% of one month's average historical invoice amount, calculated over the past  
18 year. Courts have previously approved a debtor's deposits in the amount of 50% of one month's  
19 worth of service as adequate. *See, e.g., In re Best Products Co.*, 203 B.R. 51, 54 (Bankr. E.D. Va.  
20 1996). Bankruptcy courts in California have granted similar relief in chapter 11 cases such as *In re*  
21 *Roman Catholic Bishop of Santa Rosa*, Case No. 23-10113 (Bankr. N.D. Cal. 2023) at Dkt. Nos. 31  
22 and 169 and *In re Roman Catholic Bishop of Stockton*, Case No. 14-20371 (Bankr. E.D. Cal. 2014)  
23 at Dkt. Nos. 65 and 168. In this case, the Debtor has budgeted adequate funds for payment of  
24 anticipated post-petition utility services. Passarello Decl. ¶ \_\_\_\_.

25       21. The Debtor submits that it satisfies the requirements of section 366 by proposing an  
26 acceptable form of adequate assurance of payment. The Debtor also has proposed reasonable  
27 procedures that will allow for a Utility Company to submit an Assurance Request and for the  
28 scheduling of a hearing thereon, if necessary. The Debtor anticipates that in conjunction with the

1 proposed Deposits, the Debtor will maintain postpetition liquidity, and therefore, the Utility  
2 Companies will not suffer any prejudice. Therefore, Utility Companies which receive a Deposit  
3 should not be permitted to alter, refuse, or discontinue service to the Debtor absent further order  
4 from the Court. Any alteration of service would severely impact and hamper the Debtor's operations  
5 and reorganization efforts.

6 V.

7 **NOTICE**

8 22. No trustee, examiner or creditors' committee has been appointed in this chapter 11  
9 case. Notice of the hearing on this Motion has been provided to the Office of the United States  
10 Trustee, the Debtor's secured creditors if any, the holders of the 20 largest unsecured claims against  
11 the Debtor as indicated in its petition, and the Utility Companies. Because of the nature of the relief  
12 requested, Debtor respectfully submits that no further notice is necessary or required.

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1 VI.

2 **CONCLUSION**

3 For the reasons set forth above, the Debtor respectfully request that this Court enter an order:

4 1. Prohibiting utility companies from altering, refusing or discontinuing service absent  
5 further Court order;

6 2. Determining, on an interim basis, that the Debtor's furnishing of deposits to the  
7 Utility Companies listed on Exhibit 1 hereto, upon request of such Utility Company, constitutes  
8 adequate assurance of payment under section 366;

9 3. Establishing procedures for Assurance Requests by affected Utility Companies, and  
10 for determining adequate assurance of payment as provided herein;

11 4. Scheduling a final hearing on the Motion; and

12 5. For such further relief as the Court deems necessary.

13 Dated: August 21, 2023

14 FELDERSTEIN FITZGERALD  
15 WILLOUGHBY PASCUZZI & RIOS LLP

16 By /s/ Paul J. Pascuzzi  
17 PAUL J. PASCUZZI

18 Proposed Attorneys for The Roman Catholic  
19 Archbishop of San Francisco, a California  
20 corporation sole

21 Dated: August 21, 2023

22 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

23 By /s/ Ori Katz  
24 ORI KATZ  
25 ALAN H. MARTIN

26 Proposed Attorneys for The Roman Catholic  
27 Archbishop of San Francisco, a California  
28 corporation sole

# **EXHIBIT 1**

## **(Proposed Interim Order)**

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

In re:

Case No. 23-30564

# THE ROMAN CATHOLIC ARCHBISHOP OF SAN FRANCISCO,

Chapter 11

## Debtor and Debtor in Possession.

[PROPOSED] INTERIM ORDER  
GRANTING DEBTOR'S MOTION FOR  
ORDER (1) PROHIBITING UTILITY  
COMPANIES FROM ALTERING,  
REFUSING OR DISCONTINUING  
SERVICE, (2) DETERMINING  
ADEQUATE ASSURANCE OF  
PAYMENT FOR POST-PETITION  
UTILITY SERVICES UNDER 11 U.S.C.  
§ 366, AND (3) ESTABLISHING  
PROCEDURES FOR DETERMINING  
ADEQUATE ASSURANCE OF  
PAYMENT (4) SCHEDULING A FINAL  
HEARING

Date: August 24, 2023

Time: 1:30 p.m.

Location: Via ZoomGov

Judge: Hon. Dennis Montali

### *Hearing Requested on Shortened Time*

21 The Roman Catholic Archbishop of San Francisco's ("RCASF" or "Debtor"), motion (the  
22 "Motion"),<sup>1</sup> filed on August 21, 2023, as ECF No. [ ], for an order (1) prohibiting Utility  
23 Companies from altering, refusing or discontinuing service; (2) determining that the debtor's  
24 furnishing of deposits to Utility Companies listed on Exhibit 2 (appended to the Motion) in an  
25 amount that represents 50% of the Debtor's estimated average monthly usage over the past twelve  
26 months of such utility respectively constitutes adequate assurance of payment; (3) establishing

28 <sup>1</sup> All capitalized terms used but not defined in this Order shall have the meanings given to them in the Motion.

1 procedures for assurance requests by the affected utilities and for determining adequate assurance  
2 of payment; and (4) scheduling a final hearing came on for hearing, on an interim basis, on August  
3 24, 2023, at 1:30 p.m., in Courtroom 17 of the United States Bankruptcy Court for the Northern  
4 District of California. The Debtor appeared through its counsel, Paul J. Pascuzzi. Other appearances  
5 were noted on the record.

6 The Court having considered the Motion, the Passarello Background Declaration, the  
7 Passarello Declaration filed in support of the Motion, and the matters reflected in the record of the  
8 hearing, and the Court having found that it has jurisdiction over this proceeding; that this is a core  
9 proceeding; that notice of the Motion has been given to the Office of the United States Trustee, the  
10 20 largest unsecured creditors, all secured creditors, and any applicable governmental entities; that  
11 no further notice is necessary; that the relief sought in the Motion is in the best interests of the  
12 Debtor, its estate, and its creditors; and that good and sufficient cause exists for such relief,

13 Accordingly, it is hereby ORDERED as follows:

14 1. The Motion is GRANTED, on an interim basis, as provided herein.

15 2. Within five business days of the Court's entry of this Order, the Debtor shall serve  
16 each Utility Company listed on Exhibit 1 to this Order with a copy of this Order via first class mail,  
17 and the Debtor shall serve all persons requesting special notice herein, counsel for any statutory  
18 committee(s), if one has been appointed or, if not, on the 20 largest unsecured creditors as identified  
19 in the Debtor's petition, on the Office of the United States Trustee for the Northern District of  
20 California, and counsel for the secured creditors, if any, pursuant to Federal Rules of Bankruptcy  
21 Procedure Rule 4001(b).

22 3. The Debtor is authorized, but not required, to timely remit payments for undisputed  
23 invoices for post-petition services by the Utility Companies in accordance with the Debtor's  
24 prepetition practices.

25 4. Within ten court days of the receipt by the Debtor or its bankruptcy counsel of a  
26 written request from a Utility Company for adequate assurance under the Bankruptcy Code, the  
27 Debtor will provide each Utility Company a cash deposit (the "Deposit") in an amount equal to 50%  
28 of the Debtor's estimated monthly cost of its utility consumption from each Utility Company. If a

1 Utility Company provides the Debtor with services under multiple accounts, then the Debtor may  
2 provide that Utility Company with one deposit that equals 50% of the aggregate estimated monthly  
3 usage under all of the Debtor's accounts with that Utility Company.

4       5. Except in accordance with the procedures set forth herein, and absent further order  
5 of the Court, each Utility Company is prohibited from (a) altering, refusing, or discontinuing utility  
6 services solely on the basis of the commencement of Debtor's case under the Bankruptcy Code or  
7 on account of any unpaid prepetition invoice for utility services, and (b) requiring the payment of  
8 any additional deposit or other security to the Utility Companies for the continued provision of  
9 utility services.

10      6. If a Utility Company is not satisfied with the assurance of future payment provided  
11 by the Debtor, the Utility Company must serve upon counsel for the Debtor a written request for  
12 adequate assurance ("Assurance Request"), setting forth (i) the location and account number(s) for  
13 which utility services are provided; (ii) the outstanding balance on the account and a summary of  
14 the Debtor's payment history; (iii) the reasons why the Deposit does not constitute satisfactory  
15 adequate assurance of payment; and (iv) a proposal of what the Utility Company would constitute  
16 satisfactory adequate assurance of payment.

17      7. The Assurance Request must be received by the Debtor's counsel, Felderstein  
18 Fitzgerald Willoughby Pascuzzi & Rios LLP, 500 Capitol Mall, Suite 2250, Sacramento, California  
19 95814 (Attention: Paul J. Pascuzzi) within 45 calendar days of the date a Final Order granting the  
20 Motion is served upon the Utility Company making the Assurance Request.

21      8. Without further order of the Court, the Debtor may enter into agreements granting  
22 additional adequate assurance to a Utility Company serving an Assurance Request, if the Debtor, in  
23 its discretion, determines that the request is reasonable.

24      9. If the Debtor determines that an Assurance Request is unreasonable, then the Debtor  
25 shall, within 21 days of receipt of such Assurance Request, file a motion ("Determination Motion")  
26 pursuant to Bankruptcy Code section 366(c)(3) seeking a determination from the Court that the  
27 Deposit, plus any additional consideration offered by Debtor, constitutes adequate assurance of  
28 payment and set the Determination Motion for hearing on shortened time. Pending notice and a

1 hearing on the Determination Motion, the Utility Company that is the subject of the unresolved  
2 Assurance Request may not alter, refuse, or discontinue services to the Debtor or recover or setoff  
3 against a prepetition deposit.

4       10. Nothing set forth herein is intended to, nor shall it, modify or alter the burdens of  
5 proof in connection with a Determination Motion.

6       11. Based on the establishment of the Deposit, a Utility Company will be deemed to have  
7 adequate assurance of payment unless and until a future order of this Court is entered requiring  
8 further assurance of payment.

9       12. The deadline by which objections to the Motion must be filed is \_\_\_\_\_, 2023, and  
10 such objections must be filed with the Clerk of the Bankruptcy Court and served upon counsel to  
11 the Debtor, counsel to the secured creditors, the Office of the United States Trustee for the Northern  
12 District of California, and counsel to any statutory committee(s) appointed in this case. A final  
13 hearing on the Motion before the undersigned United States Bankruptcy Judge shall be heard on  
14 \_\_\_\_\_, 2023, at \_\_:00 \_\_.m. (PDT). If no objections are filed to the Motion, the Court may enter  
15 the Final Order without further notice or hearing.

16       13. The Debtor is authorized, in its sole discretion, to amend the list of Utility Companies  
17 attached as Exhibit 1 to add or delete any Utility Company. The Debtor shall serve the amended  
18 Exhibit 1 on any affected Utility Company within five business days of such amendment.

19       14. Nothing in the Motion, Exhibit 2 thereto, or this Order constitutes a finding that any  
20 entity is or is not a utility company hereunder or under section 366 of the Bankruptcy Code.

21       15. Notwithstanding the relief granted herein and any actions taken pursuant hereto,  
22 nothing herein shall be deemed: (i) an admission as to the validity of any claim against the Debtor;  
23 (ii) a waiver of the Debtor's rights to dispute any claim on any grounds; (iii) a promise or  
24 requirement to pay any claim; (iv) an implication or admission that any particular claim is of a type  
25 specified or defined hereunder; (v) a request or authorization to assume any agreement, contract or  
26 lease pursuant to section 365 of the Bankruptcy Code; or (vi) a waiver of the Debtor's rights under  
27 the Bankruptcy Code or any other applicable law.

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16. This Court shall retain jurisdiction over all matters arising from or related to the interpretation or implementation of this Order.

17. The Debtor and its employees and agents are authorized to take or refrain from taking such acts as are necessary and appropriate to implement and effectuate the relief granted herein.

**\*\*\*END OF [PROPOSED] ORDER\*\*\***

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EXHIBIT 2

## LIST OF UTILITY COMPANIES AND ACCOUNTS

Name and Address of Utility	Type of Service / Account Number	Property Address Where Utility Provided (if applicable)
AT&T PO Box 5025 Carol Stream, IL 60197-5025	mobile phones xxx-xxx-xxxx 1199	N/A
AT&T PO Box 5025 Carol Stream, IL 60197-5025	mobile phones xxx-xxx-xxxx 5618	N/A
AT&T PO Box 5025 Carol Stream, IL 60197-5025	mobile phones xxx-xxx-xxxx 3478	N/A
AT&T PO Box 5025 Carol Stream, IL 60197-5025	mobile phones xxx-xxx-xxxx 5229	N/A
AT&T PO Box 5025 Carol Stream, IL 60197-5025	mobile phones xxx-xxx-xxxx 5558	N/A
AT&T PO Box 5025 Carol Stream, IL 60197-5025	mobile phones xxx-xxx-xxxx 3212	N/A
AT&T PO Box 5025 Carol Stream, IL 60197-5025	mobile phones xxx-xxx-xxxx 1957	N/A
California Water Service Co PO Box 4500 Whittier, CA 90607-4500	water 2117xxxxxx	455 W 20th Ave San Mateo
Comcast PO Box 60533 City of Industry, CA 91716-0533	cable TV 1131	455 W 20th Ave San Mateo
Pacific Gas and Electric PO Box 997300 Sacramento, CA 95899-7300	electric 4627-4	1 Peter Yorke Way San Francisco

	<b>Name and Address of Utility</b>	<b>Type of Service / Account Number</b>	<b>Property Address Where Utility Provided (if applicable)</b>
1	Pacific Gas and Electric PO Box 997300 Sacramento, CA 95899-7300	gas 2298-6	1 Peter Yorke Way San Francisco
2	Pacific Gas and Electric PO Box 997300 Sacramento, CA 95899-7300	electric 2167-8	1600 Van Ness Ave San Francisco
3	Pacific Gas and Electric PO Box 997300 Sacramento, CA 95899-7300	gas 6967-0	1600 Van Ness Ave San Francisco
4	Pacific Gas and Electric PO Box 997300 Sacramento, CA 95899-7300	gas 4942-2	320 Middlefield Rd Menlo Park
5	Pacific Gas and Electric PO Box 997300 Sacramento, CA 95899-7300	electric 8677-4	320 Middlefield Rd Menlo Park
6	Pacific Gas and Electric PO Box 997300 Sacramento, CA 95899-7300	gas 8857-9	455 W 20th Ave San Mateo
7	Pacific Gas and Electric PO Box 997300 Sacramento, CA 95899-7300	gas & electric 1695-5	5618 California St San Francisco
8	Recology Golden Gate 250 Executive Park Blvd. Suite 2100 San Francisco, CA 94134-3306	trash collection 2405	1 Peter Yorke Way San Francisco
9	Recology Golden Gate 250 Executive Park Blvd. Suite 2100 San Francisco, CA 94134-3306	trash collection 1315	5618 California St San Francisco
10	Recology San Mateo PO Box 848268 Los Angeles, CA 90084-8268	trash collection 4057	455 W 20th Ave San Mateo
11	San Francisco Water, Power & Sewer PO Box 7369 San Francisco, CA 94120-7369	water 5713xxxxxx	1 Peter Yorke Way San Francisco

1 2 3 4 5 6 7 8 9 10 11 12 13 14	Name and Address of Utility	Type of Service / Account Number	Property Address Where Utility Provided (if applicable)
	San Francisco Water, Power & Sewer PO Box 7369 San Francisco, CA 94120-7369	fire service 4473xxxxxx	1 Peter Yorke Way San Francisco
	San Francisco Water, Power & Sewer PO Box 7369 San Francisco, CA 94120-7369	water 9298xxxxxx	1600 Van Ness Ave San Francisco
	San Francisco Water, Power & Sewer PO Box 7369 San Francisco, CA 94120-7369	water 5494xxxxxx	5618 California St San Francisco
	TPx Communications PO Box 509013 San Diego, CA 92150-9013	telephone 8844	1 Peter Yorke Way San Francisco
	Verizon Wireless PO Box 660108 Dallas, TX 75266-0108	internet access 9798-xxxxxx	1 Peter Yorke Way San Francisco